

IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

FAO (Ord) No. 174 of 2006.

Date of Decision: 9th November, 2006.

Harbans Kumar and others. Petitioners.

Versus

Naveen Verma and others. Respondents.

Coram

The Hon'ble Mr. Justice V.K. Gupta, C.J.

Whether approved for reporting¹?

For the Petitioners: Mr. Sanjeev Kuthiala,
Advocate.

For the respondent: Mr. Bhupender Gupta, Senior
Advocate, with Mr. Neeraj
Gupta and Mr. Parveen Kumar
Sharma, Advocates, for
respondents No.1,3 and 4.

V.K. Gupta, C.J. (Oral).

As the arguments in the appeal were in progress, the learned counsel for the parties came to terms and submitted that the following agreed order be passed.

The judgment dated 1st May, 2006 passed by the learned Presiding Officer, Fast Track Court, Mandi in Civil Appeal No.112/2000, 90/2004 be set aside. The judgment and decree passed by the then Sub Judge Ist Class, Court No.II, Mandi dated 27th July, 2000 in Civil Suit No.242/99/96,

¹ Whether reporters of the Local Papers are allowed to see the Judgment?

only in so far as it relates to the redemption and the handing over of the vacant possession of the disputed shop by the respondents-defendants be modified to the extent that the redemption shall take place and the vacant possession would be delivered, both being subject to the appellants-plaintiffs depositing in the Court below Rs.22,000/- being the mortgage amount, within a period to be determined and specified by the learned trial Court. It is being made absolutely clear and without any manner of doubt that this agreement between the parties about the modification of the judgment and decree to the aforesaid limited extent relating to the redemption and delivery of vacant possession subject to payment of Rs.22,000/- is without prejudice to the rights and contentions of the respondents in this appeal about their challenging the aforesaid modified decree in a First Appeal which the respondents may ultimately decide or choose to prefer after the suit is decided afresh in view of the following proposed order.

The parties also agree that the suit be remanded for re-trial by the learned trial Court only with respect to Issue No.3 relating to the

entitlement of the appellants for mesne profits and the extent thereof.

Based upon the aforesaid agreement between the parties, this appeal is disposed of as settled and the following agreed order is passed by this Court.

The judgment and decree dated 1st May, 2006 passed by the learned Presiding Officer, Fast Track Court, Mandi and impugned in this appeal is set aside lock, stock and barrel. The judgment and decree passed by the learned trial Judge on 27th July, 2000 only in so far as it relates to the relief of redemption and the delivery of vacant possession is modified by incorporating therein the condition that the grant of these two reliefs is subject to the appellants depositing in the trial Court, within the time to be fixed by the trial Court at the stage of disposal of the suit after re-trial, an amount of Rs.22,000/-. The suit is remanded to the learned trial Court for re-determination and fresh finding on Issue No.3 because unfortunately the trial Court committed a grave error in, on the one hand not agreeing to accept the version of the plaintiffs-appellants about their entitlement of Rs.4,000/- as mesne profits per month and on

the other hand not itself determining any amount of mesne profits per month and simply saying that the plaintiffs would be entitled to the mesne profits at the prevailing market rate. I am saying so because either the learned trial Court should have accepted the version put forth by the plaintiffs or, if it did not elect to do so, it should have with reference to the evidence and material on record proceeded to determine the amount of mesne profits which it thought was just and reasonable because Issue No.3 cast an obligation upon the learned trial Court to determine the mesne profits and the extent thereof. The learned trial Court, therefore, after affording opportunity to the parties to lead evidence shall now decide Issue No.3 afresh in the light of the aforesaid observations and directions.

After deciding Issue No.3 afresh, the suit shall be disposed of by passing a fresh decree and it would be at that stage that the trial Court shall order and direct the plaintiffs to deposit the amount of Rs.22,000/- as a condition precedent for obtaining the relief of redemption and the delivery of vacant possession.

The suit shall be disposed of afresh in accordance with the aforesaid directions within a period of six months from today.

It goes without saying that if the respondents-defendants feel aggrieved, they shall have absolute liberty to challenge the judgment and decree which the learned trial Court would ultimately pass before the competent First Appeal Court. In the event of that eventuality taking place, the respondents shall not be inhibited in any manner in raising all pleas and taking all grounds available to them while assailing and challenging the judgment of the learned trial Court as if no appeal at all had been filed by them earlier before any Appeal Court and to that extent the judgment dated 1st May, 2006 delivered by the learned Presiding Officer, Fast Track Court, Mandi in Civil Appeal No.112/2000, 90/2004 shall stand obliterated. The record of the Appeal Court be sent back to the learned Appellate Judge. The record of the trial Court shall be sent to the learned District Judge, Mandi before whom the parties through their learned counsel are directed to appear on 27th November, 2006. The learned District Judge on that date shall assign the suit to an appropriate

Civil Judge and direct the parties to appear before the said Court on a date to be fixed by him for this purpose in the first/second week of December, 2006.

CMP No.685 of 2006.

In view of the disposal of the main appeal, this application shall stand disposed of.

9th November, 2006.
(tr)

(V.K. Gupta), C.J.